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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FLATWIRE SOLUTIONS, LLC, ) Case No. CV 09-07479 DDP (FFMx)  
)  
Plaintiff, ) ORDER DENYING PLAINTIFF'S MOTION  
) TO REMAND  
v. ) [Motion filed on November 9,2009]  
)  
ROBERT SEXTON,an individual; )  
DECORP AMERICAS, a Delaware )  
corporation; SOUTHWIRE )  
COMPANY, a Georgia )  
corporation and Does 1 )  
through 50, )  
)  
Defendants. )  
\_\_\_\_\_ )

This matter comes before the Court on plaintiff's motion for remand. After reviewing the papers submitted by the parties and considering the arguments therein, the Court is inclined to deny plaintiff's motion to remand the case to state court.

**I. BACKGROUND**

A. Procedural Background

On August 18, 2009, plaintiff Flatwire Solutions, LLC ("Flatwire") filed suit in Los Angeles County Superior Court against

1 defendants Robert Sexton ("Sexton"), DeCorp Americas ("DeCorp"),  
2 and Southwire Company ("Southwire") alleging causes of action for  
3 (1) breach of contract; (2) negligent misrepresentation; and  
4 (3) intentional misrepresentation.

5 On October 15, 2009, Sexton removed the instant action based  
6 on diversity jurisdiction, pursuant to 28 U.S.C. §§ 1332 and 1441.

7 On November 9, 2009, Flatwire filed a motion to remand the  
8 instant proceeding to state court. On November 16, 2009, Southwire  
9 filed an opposition to Flatwire's motion.<sup>1</sup> On November 23, 2009,  
10 Flatwire filed a reply.

11 B. Factual Background

12 This case arises from defendants' alleged breach of a contract  
13 to market and sell a patented product called "flatwire." (Compl. ¶  
14 7.) On October 1, 2004, Flatwire and DeCorp entered into a  
15 Distribution Agreement ("agreement"), pursuant to which Flatwire  
16 was appointed the exclusive distributor of patented flatwire  
17 technology.<sup>2</sup> (Compl. ¶ 8.) Under the agreement, Flatwire was the  
18 exclusive distributor for a customer base that includes Custom  
19 Electronics Design and Installation Association ("CEDIA")  
20 installers, integrators, and retailers throughout the United  
21 States.<sup>3</sup> (Compl. ¶ 11.) Also under the agreement, defendants were

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22  
23 <sup>1</sup> On October 16, 2009, DeCorp and Sexton filed a joinder to  
Southwire's opposition.

24 <sup>2</sup> The patented flatwire technology consists of a system of  
25 paper-thin wires that connect electronic devices. Compl. ¶ 8. The  
26 flatwire eliminates the need in many cases for "in the way" or  
"through the studs" installation for electronic components. Compl.  
¶ 8.

27 <sup>3</sup> CEDIA is a trade association of individuals involved in the  
28 business of installing high quality audio, video, and home theater  
(continued...)

1 allegedly obligated to provide marketing, technical, and sales  
2 support that "would be crucial to the success of marketing efforts  
3 to CEDIA installation professionals." (Compl. ¶ 11.) Flatwire  
4 alleges that it suffered damages as a result of defendants' failure  
5 to supply flatwire products and "failure to provide any meaningful  
6 technical, sales or marketing support" despite its obligations to  
7 do so under the agreement. (Compl. ¶ 5.)

## 8 9 **II. LEGAL STANDARD**

10 Remand may be ordered either for lack of subject matter  
11 jurisdiction or for any defect in removal procedure. See 28 U.S.C.  
12 § 1447(c). Courts strictly construe the removal statutes against  
13 removal jurisdiction, and jurisdiction must be rejected if there is  
14 any doubt as to the right of removal. See Gaus v. Miles, Inc., 980  
15 F.2d 564, 566 (9th Cir. 1992). The party seeking removal bears the  
16 burden of establishing federal jurisdiction. See Prize Frize, Inc.  
17 v. Matrix, Inc., 167 F.3d 1261, 1265 (9th Cir. 1999). The  
18 defendant also has the burden of showing that it has complied with  
19 the procedural requirements for removal. Judge William W.  
20 Schwarzer, et al., California Practice Guide: Federal Civil  
21 Procedure Before Trial § 2:609 (2007).

22 Under 28 U.S.C. § 1446(b), a defendant must file a notice of  
23 removal within 30 days after being served with a complaint alleging  
24 a basis for removal. When there are multiple defendants, all  
25 defendants named in the complaint who have been properly served in  
26 the action must also join in the removal. Hewitt v. City of

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27  
28 <sup>3</sup>(...continued)  
equipment. Compl. ¶ 4.

1 Stanton, 798 F.2d 1230, 1232 (9th Cir. 1986). This is known as the  
2 rule of unanimity. See Chicago, Rock Island & Pac. Railway v.  
3 Martin, 178 U.S. 245 (1900); see also Schwarzer, et al., California  
4 Practice Guide: Federal Civil Procedure Before Trial 2:905.2  
5 (2007).

6 Pursuant to 28 U.S.C. § 1447(c), a motion to remand based on  
7 any defect other than subject matter jurisdiction must be made  
8 within 30 days of the filing of a notice of removal.

### 9 10 **III. DISCUSSION**

#### 11 A. Whether Removal Was Proper

12 Southwire's notice of removal shows that all defendants have  
13 properly joined in the removal petition pursuant to 28 U.S.C.  
14 1446(b). Southwire's notice of removal represented that defendants  
15 Sexton and DeCorp "consent[ed] to and join[ed] in the removal of  
16 this action." See (Notice of Removal ¶¶ 3-4.) The Ninth Circuit  
17 has held that "the filing of a notice of removal can be effective  
18 without individual consent documents on behalf of each defendant."  
19 Proctor v. Vishay Intertechnology Inc., 584 F.3d 1208, 1225 (9th  
20 Cir. 2009). Even though Sexton and DeCorp have filed separate  
21 notices of joinder in removal on October 16, 2009, the notice of  
22 removal filed on October 15, 2009 is effective because it contains  
23 the statement of consent from co-defendants Sexton and DeCorp, and  
24 it is signed by an attorney of record. See id. (holding that one  
25 defendant's timely removal notice containing an averment of the  
26 other defendants' consent and signed by an attorney is sufficient  
27 for removal).

1 Flatwire contends removal was not timely because defendants  
2 Sexton and DeCorp did not join in removal until October 16, 2009  
3 and defendants did not remove within the 30-day removal period that  
4 commenced on September 15, 2009.<sup>4</sup> (Mot. at 5.) Because  
5 Southwire's notice of removal properly joined all co-defendants and  
6 was effective on October 15, 2009, the Court concludes that  
7 Southwire's removal was timely.<sup>5</sup>

8  
9 **III. CONCLUSION**

10 In accordance with the foregoing, the Court hereby DENIES  
11 Flatwire's motion for remand.

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13  
14 IT IS SO ORDERED.

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17 Dated: December 29, 2009

  
DEAN D. PREGERSON  
United States District Judge

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19  
20 <sup>4</sup> 28 U.S.C. § 1446(b) does not address the time period for  
21 removal in actions involving staggered service of multiple  
22 defendants. Ford v. New United Motors Mfg., Inc., 857 F. Supp.  
23 707, 709 (1994). Although the Ninth Circuit has yet to reach this  
24 issue, the majority of published decisions have found that in  
25 multi-defendant actions, the 30-day removal period commences for  
all defendants when service is accomplished on the first-served  
defendant. See, e.g. Teitelbaum v. Soloski, 843 F. Supp. 614, 615  
(1994). Here, the 30-day removal period commenced on September 15,  
2009, the date Southwire was served. (Opp'n at 2.)

26 <sup>5</sup> Flatwire argues at length that DeCorp lacked the ability to  
27 consent to removal because of its status under Delaware law, as a  
28 "nonexistent" corporation. The Court need not reach this argument,  
as Proctor makes clear that an attorney of record for one defendant  
can provide notice of all defendants' consent to removal. Proctor,  
584 F.3d at 1225.